IN THE HIGH COURT OF BOMBAY AT GOA

TAX APPEAL NOS.1, 2, 3 AND 4 OF 2003

TAX APPEAL NO.1 OF 2003

The Commisioner of Income Tax,
having Office at Aayakar
Bhavan, Patto Plaza,
Panaji- Goa. ... Appellant.

versus

Mrs. Theresa Dias,
Margao-Goa. ... Respondent.

Mr. S. R. Rivonkar and Ms. A. Fadte, Advocates for the Appellant.

Mr. M. P. Almeida, Advocate for the Respondent.

TAX APPEAL NO.2 OF 2003

The Commissioner of Income Tax,
having Office at Aayakar
Bhavan, Patto Plaza,
Panaji-Goa. ... Appellant.

versus

Mrs. Ninette Dias,
Meera Pajifond,
Margao-Goa. ... Respondent.

Mr. S. R. Rivonkar and Ms. A. Fadte, Advocates for the Appellant.

Mr. M. P. Almeida, Advocate for the Respondent.

TAX APPEAL NO.3 OF 2003

The Commissioner of Income Tax,
having Office at Aayakar
Bhavan, Patto Plaza,
Panaji-Goa. ... Appellant.

versus

Shri Domnic Dias,
C/o. Hotel La Flor,
Margao-Goa. ... Respondent.

Mr. S. R. Rivonkar and Ms. A. Fadte, Advocate for the Appellant.

Mr. M. P. Almeida, Advocate for the Respondent.

TAX APPEAL NO.4 OF 2003

The Commissioner of Income Tax,
having Office at Aayakar
Bhavan, Patto Plaza,
Panaji-Goa. ... Appellant.

versus

Shri Richard Dias,
Meera, Pajifond,
Margao-Goa. ... Respondent.

Mr. S. R. Rivonkar and Ms. A. Fadte, Advocates for the Appellant.

Mr. M. P. Almeida, Advocate for the Respondent.

CORAM: F. I. REBELLO &
P. V. HARDAS, JJ.

DATED: 24TH JUNE, 2003.

ORAL JUDGMENT(PER F.I.REBELLO, J.)

These are Appeals by the Revenue under Section 260-A of the Income Tax Act, 1961. It is not necessary to go into the facts involved except to refer to the questions formulated for decision. The Members constituting the Income Tax Appeals, Pune, deferred in their opinion. The Non Judicial Member, partly allowed the Appeals. While so holding in paragraph 29 directed the A.O.to adopt the fair market of the subject land as on 1st April, 1981 at Rs.48,000/- and as determined by the valuer Nagarsekar as expressly required by the A.O. after rejecting the report of valuation of approved valuer.

The Judicial Member while summarising his discussion in paragraph 32 has held as under:-

1. Neither of the valuation report can be relied on being arbitrary.

2. The assessee has been able to rebut the legal presumptions that value in the gift deed is not the correct market value.

3. No factual data or material is available before the Bench to determine the value as on 1-4-81.

4. It is necesdsary to refer the matter on valuation to the Departmental Valuation Officer under Section 55A.

In view of that, the learned Judicial Member directed that Order be set aside and the matter be restored to the file of A.O. to refer the matter of valuation to a Senior District Officer and then to adjudicate the matter after taking into consideration such report and all other material which may be brought on record by the assessee or gathered by him.

2. As there was a difference, the following questions were formulated to be referred to a third Member:-

> "1. Whether on the facts and in the circumstances of the case and in law, the value of the land mentioned in the gift deed dated 11-9-1981 could be assumed as fair market value as on 1-4-1981, subject to rebuttal, if any, as held by the Judicial Member OR the value of the land mentioned in the aforesaid gift deed could not be considered as market value at all for determining the value of land as on 1-4-1981 merely because the transaction of the gift was a family arrangement as held by the Accountant Member?
>
> 2. Whether on the facts and in the circumstances of the case, and in law, the value of land as on 1-4-1981 can be accepted at Rs.6480 lakhs as held by the Accountant Member OR the matter of valuation be restored to the file of the AO as held by the Judicial Member?

3. By the Order dated 21st February, 2002, the third Member agreed with the view by the Judicial Member and accordingly directed that the matter should be restored to the file of the A.O. for valuation. It was specifically contended before the third Member on behalf of Revenue that Section 55A is not applicable. It was specifically answered by holding that Section 55A had not been referred and consequently the controversy could not be decided by him.

4. At the hearing of these Appeals, the principle question formulated on behalf of the Revenue is as under:-

> "Whether on the facts and circumstances of the case the ITAT was justified in directing the Assessing Officer to refer the matter of valuation to a District Valuation Officer taking recourse to Section 55A of the IT Act, ignoring the fact that the assessment was already completed on 12-2-98?

5. Learned Counsel for the Appellants contend that in the instant case, the issue of referring the matter under Section 55A could have only arisen if one of the situation contemplated by the Section was satisfied. It is pointed out that it is not the position and once that be the case, the Order referring the matter to the Assessing Officer is without jurisdiction and consequently

liable to be set aside.

6. We have perused the impugned Orders. The entire argument of the Revenue is based on the Gift Deed dated 11th September, 1981 and that Gift Deed was rejected both by the Non Judicial Member as also the Judicial Member. The reference of the third Member was not on that aspect but only on the aspect as to what should be the correct method of valuation or referring/removing the matter to the Assessing Officer. As pointed out earlier before the third Member also this contention of non applicability of Section 55A was taken and the third Member in paragraph 25 while specific reference be made has held that the issue was not referred. Even otherwise, on the record both the Judicial Member and Non Judicial Member were unanimous on the fact that the Gift Deed dated 11th September, 1981 could not be relied upon for reasons given by them in their Orders. That is purely a finding of facts. There is no substantial question of law involved in this case where this Court could entertain Section 6 of the Income Tax Act.

7. In the light of that, there is no merit in these Appeals which is accordingly disposed of.

P. V. HARDAS, J. F. I. REBELLO, J.